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Attorneys for:
KENNETH JOHNSON

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH JOHNSON,

Defendant

Criminal case No. 20-CR-238-JLT-SKO

**REPLY ON MOTION FOR BILL OF
PARTICULARS**

Date: January 31, 2024

Time: 1:00 p.m.

Place: Honorable Sheila K. Oberto
Courtroom 7

Defendant Mr. Kenneth Johnson, by counsel, The Law Office of Ryan J. Villa, by Ryan J. Villa, and Andrea Lee Luem, hereby submits this Reply to the United States' Opposition to the Motion for Bill of Particulars.

ARGUMENT

Despite the government's efforts to the contrary in the Opposition, it failed to demonstrate why the bill of particulars sought by Mr. Johnson is not warranted. To be sure, this Court has discretion to grant the bill, and there are district court cases, with different factual scenarios, that

1 come out on either side. Here, given the unique circumstances that Mr. Johnson faces with respect
2 to Counts Two and Three, and the lack of any discovery that would demonstrate how he was
3 involved, a bill of particulars as to his role in the killings, and the VICAR purpose for the killing
4 is essential. While the Opposition brief lauds the indictment's description of the AB prison gang,
5 and why it could be a racketeering enterprise, it fails to acknowledge that the indictment is silent
6 as to how Mr. Johnson murdered the two victims in Counts Two and Three, and why that was
7 connected to any alleged AB enterprise business or would otherwise increase Mr. Johnson's role
8 in the AB.
9

10 To be sure, Mr. Johnson concedes that the indictment adequately alleges with specificity
11 why the AB might constitute an enterprise engaged in racketeering. But his Motion does not
12 challenge this aspect of the indictment or seek a bill of particulars on this element, or the
13 racketeering conspiracy alleged in Count One. Instead, he narrowly requests supplemental
14 information on how he participated in the murders, and why those murders had a VICAR purpose.
15 "The bill of particulars' purpose is to supplement the indictment by providing more details of facts
16 upon which the charges are based." *United States v. Short*, 857 F.2d 1479 (9th Cir. 1988). *See*
17 *United States v. Inryco, Inc.*, 642 F.2d 290, 295 (9th Cir.1981), *cert. dismissed*, 454 U.S. 1167
18 (1982). Here, there is nothing in the indictment demonstrating how Mr. Johnson could have
19 participated in these murders or why he would have done so. As such, the Court should require a
20 bill of particulars on the government's theory of the case on this matter. *United States v. Giese*,
21 597 F.2d 1170, 1180 (9th Cir. 1979).
22

23 Notably, the government claims that the discovery provided about the murders obviates the
24 need for a bill of particulars. Opposition at 7. The government cites *United States v. Buckner*, 610
25 F.2d 570, 574 (9th Cir. 1979) for the proposition that when "all relevant facts were disclosed and
26
27

1 available, the government is not obliged to disclose” its theory. Here, however, the government
2 has not produced one single iota of discovery on how Mr. Johnson participated in the murder or
3 why it would aid the enterprise or increase his position in the AB. As the Court knows from the
4 previous motions litigation on discovery, and can see from the Motion to Compel [Doc. 84], and
5 Motion of pursuant to Fed. R. Crim. P. 12(b)(4)(B) [Doc. 885] and the government’s Opposition
6 to those Motions, [Docs. 904, 905], the government has never claimed that it has in fact disclosed
7 such discovery. Per *Buckner*, therefore, the government should be required to provide a bill of
8 particulars on these elements of the VICAR murders alleged in Counts Two and Three.
9

10 Respectfully submitted,

11 /s/ Ryan J. Villa

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19
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21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on January 12, 2024 I served a true and correct copy of the foregoing
23 via ECF to:

24 All counsel of record

25 /s/ Ryan J. Villa

26 Ryan J. Villa